



---

**COORDINATION OF FEDERAL  
EQUAL EMPLOYMENT  
OPPORTUNITY PROGRAMS**

---

OCTOBER 1, 1984 - SEPTEMBER 30, 1985

---

OFFICE OF THE LEGAL COUNSEL  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

---

MAY 1986

Full Text Available

Office of the Legal Counsel  
Equal Employment Opportunity Commission  
2401 "E" Street, N.W.  
Washington, D.C. 20507

Telephone: (202) 634-7581

Allyson K. Duncan, Acting Legal Counsel

Elizabeth M. Thornton, Associate Legal Counsel  
Coordination and Guidance Services

Stuart Frisch, Assistant Legal Counsel  
for Coordination

Coordination Division Staff

Christopher Bell  
Elaine Herskowitz  
Bernard Holmes  
Evelyn M. Idelson  
Verna S. Inman

Arthur Jefferson  
Tonya Lewis  
Kathleen Light  
Craig McLaurin

Robert L. Walker and Irene L. Hill also served as Acting Assistant Legal Counsel for Coordination during the period covered by this report.



OFFICE OF  
THE CHAIRMAN

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
WASHINGTON, D.C. 20507

The President of the United States  
The President of the Senate  
The Speaker of the House of Representatives

Dear Sirs:

In accordance with Section 715 of the Equal Employment Opportunity Act of 1972 and Section 1-401 of Executive Order 12067, I am submitting a report of the Commission's interagency coordination activities for the period October 1, 1984 - September 30, 1985.

This report describes continued progress toward meeting the major goals and mandates of these authorities: to provide leadership and coordination to all Federal agency equal employment programs; to promote uniformity, effectiveness and efficiency, and to eliminate duplication, overlap and inconsistency in these programs. Coordination efforts benefit both the general public and the Federal government. Actions to eliminate duplicative and inconsistent regulatory requirements help reduce the costs of compliance for employers and the government; more efficient use of Federal resources helps improve service to protected groups; improving the consistency and clarity of equal employment standards assists voluntary compliance with the law.

The Commission will continue to exercise its leadership role under Section 715 and Executive Order 12067 to assure that the Federal commitment to end employment discrimination is carried out with maximum effectiveness and efficiency.

Sincerely,

A handwritten signature in cursive script, reading "Clarence Thomas", is written over a horizontal line.

Clarence Thomas  
Chairman

Enclosure

BEST COPY AVAILABLE

## TABLE OF CONTENTS

|                                                                                               | <u>Page No.</u> |
|-----------------------------------------------------------------------------------------------|-----------------|
| INTRODUCTION . . . . .                                                                        | 1               |
| I. INITIATIVES TO IMPLEMENT COORDINATION OBJECTIVES . . . . .                                 | 3               |
| A. <u>Resource Directory for Equal Employment</u><br><u>Compliance Information.</u> . . . . . | 3               |
| B. EEO Research Roundtable. . . . .                                                           | 5               |
| C. Sharing of EEO Survey Data . . . . .                                                       | 6               |
| D. Bulletin of EEO Issuances. . . . .                                                         | 7               |
| E. Complaint Referrals to EEOC Under Joint EEOC-DOJ<br>Regulation. . . . .                    | 8               |
| II. COORDINATION AND REVIEW OF FEDERAL EEO ISSUANCES . . . . .                                | 10              |
| A. Agency Issuances . . . . .                                                                 | 10              |
| OPM Guidance on Employment of Persons with Diabetes. .                                        | 10              |
| FCC Cable Regulations. . . . .                                                                | 11              |
| Section 504 Regulations for Agencies' Federally<br>Conducted Programs. . . . .                | 12              |
| Other Agency Issuances . . . . .                                                              | 13              |
| B. EEOC Issuances . . . . .                                                                   | 14              |
| Federal Sector Employment. . . . .                                                            | 15              |

2025 RELEASE

## A P P E N D I X

|                                                                                                              | <u>Page No.</u> |
|--------------------------------------------------------------------------------------------------------------|-----------------|
| Executive Order 12067                                                                                        | A-1             |
| Coordination Regulations                                                                                     | A-5             |
| Letter to EEOC Chairman on Executive Order 12067<br>Coordination from the Office of Management and<br>Budget | A-15            |
| Equal Employment Issuances Reviewed/Coordinated<br>October 1, 1984 - September 30, 1985                      | A-17            |

## INTRODUCTION

This report details activities of the Commission to achieve more effective coordination of Federal equal employment programs, as required by Section 715 of the Equal Employment Opportunity Act of 1972 and Executive Order 12067, 1/ for the period from October 1, 1984 to September 30, 1985. The report describes progress toward meeting the major goals and mandates of these authorities: to eliminate duplication, overlap and inconsistency, and to promote uniformity, effectiveness and efficiency in Federal EEO programs.

The need for coordination of the growing number of Federal equal employment statutes, orders and regulations was recognized by the Congress in 1972. Section 715 of the Equal Employment Opportunity Act of 1972 established an Equal Employment Opportunity Coordinating Council with responsibility for:

...developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of . . . departments, agencies and branches of the Federal government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies.

The Council, lacking staff and the authority of a lead agency, was unsuccessful in accomplishing its mission. Reorganization Plan No. 1 of 1978 transferred the Council's functions to the Equal Employment Opportunity Commission, and Executive Order 12067 directed the Commission to lead a coordinated program to develop uniform standards and procedures in

---

1/ 43 FR 28967 (July 5, 1978); 3 CFR, 1978 Comp., p. 206. See Appendix A-1.

Federal equal employment programs. Coordination is required for all rules, regulations, guidelines, policies and procedures, covering definitions of employment discrimination, investigation and compliance procedures, sharing of records, findings and documentation, data and record-keeping requirements, training programs and publications. 2/

Earlier reports summarized steps taken by the Commission to implement the coordination process and progress in meeting the goals of Executive Order 12067. 3/ This report describes similar coordination activities. It is divided into two sections:

I. Initiatives to Implement Coordination Objectives;

II. Coordination and Review of Federal Agency Equal Employment Issuances.

The Appendix contains documents related to coordination activities and a list of Federal agency equal employment issuances reviewed and coordinated during the year.

2/ The coordination function applies to external equal employment programs administered by Federal agencies, not to the program conducted by each agency for its own employees. The internal Federal equal employment program is coordinated through consultation with other agencies on policies, programs and issuances of the Equal Employment Opportunity Commission and the Office of Personnel Management.

3/ Office of Interagency Coordination: Report of the First Year, 1978-79; Coordination of Federal Equal Employment Opportunity Programs: July 1, 1979 - June 30, 1981; July 1, 1981 - June 30, 1982; July 1, 1982 - September 30, 1983; October 1, 1983 - September 30, 1984. Limited copies are available from the Commission.

I. Initiatives to Implement Coordination Objectives

A. Resource Directory for Equal Employment Compliance Information

During FY 1985 the Commission developed a Resource Directory of Equal Employment Compliance Information designed to provide information to Federal agencies on employment data available from other agencies with external civil rights programs. This Directory implements Sections 1-301(c) and 1-301(f) of Executive Order 12067, which direct the Commission to "develop procedures...to minimize duplicative investigations or compliance reviews of particular employers or classes of employers" and "to provide for the sharing of compliance records, findings, and supporting documentation among Federal departments and agencies responsible for ensuring equal employment opportunity." It also carries out the intent of the Paperwork Reduction Act of 1980 to reduce the Federal paperwork burden for individuals and State and local governments. This Act removed previous restrictions on the exchange of information among Federal agencies and created authority for agency exchanges of information obtained from official collection requests, where the disclosure is not inconsistent with any applicable law. 4/

More than 30 Federal agencies currently have legal authority for employment nondiscrimination applicable to private sector and non-Federal public sector employees. Consequently, the employment practices of many employers fall under the jurisdiction of more than one Federal agency. Because of overlapping jurisdictions, there is substantial potential for

---

4/ Section 3510(a) of the Paperwork Reduction Act states: "The Director [of the Office of Management and budget] may direct an agency to make available to another agency, or an agency may make available to another agency, information obtained pursuant to an information request if the disclosure is not inconsistent with any applicable law." 44 USC 3510(a), (1984).

duplicative or equivalent requests for information from the same employer. The Directory is meant to assist Federal compliance personnel in locating and obtaining information relevant to their EEO programs which is already on file with other agencies.

The information in the Resource Directory was collected through a self-reporting survey of Federal agencies with external equal employment responsibilities. Forty-one agencies and operational components of agencies responded, providing information on the types of data they maintain and their availability to other Federal agencies. The Directory identifies whether the documents are located in agency headquarters or field offices, how long the records are kept and how they are made available to Federal personnel. It catalogues alphabetically, by agency, the following types of information:

Compliance documents relating to individual complaint investigations; systemic or pattern and practice investigations; compliance reviews; conciliation agreements and affirmative action plans.

Complaints tracking systems, indicating whether an agency maintains a system for tracking complaints, if it is computerized or manual, and how information may be retrieved from it (by complainant name, employer name, etc.).

EEO surveys. EEOC collects reports regularly from employers and local referral unions which break down employment or membership by job category and by race, sex and ethnic composition. The Directory identifies these and several other agency reports which provide data on specialized workforces.

Labor market data. Two agencies - the EEOC and the National Science Foundation - also develop from census surveys labor market data by occupation, race, ethnicity and sex, which they will provide to other Federal agencies.

Each agency listing provides the name, address and telephone number of appropriate person(s) to contact for such information in headquarters and field offices. The Appendix to the Directory reproduces Memoranda of Understanding which provide for information sharing between agencies, the text of the EEOC - Department of Justice joint regulation providing for agencies' referral of individual employment discrimination complaints to the EEOC, 5/ and the implementing procedures for this regulation.

Each agency was given the opportunity to review the information on its own programs as compiled for the Directory as well as a draft of the entire document. The Commission plans to publish the Directory during FY 1986. Copies will be distributed to all agencies that conduct external EEO programs.

#### B. EEO Research Roundtable

In June, 1985, the EEOC sponsored the first session of an Equal Employment Opportunity Research Roundtable. The purpose of the Roundtable is to serve as a forum for the informal exchange of information among researchers on issues that affect equal employment opportunity. The Roundtable provides an opportunity for participants to explore ideas and better design projects. It also serves to keep the EEO research community abreast of the latest developments in EEO, share information on their data collection efforts, and disseminate findings to interested parties.

---

5/ 29 C.F.R. 1691; 28 C.F.R. Part 42. For discussion of this regulation, see p. 8. See also Coordination of Federal Equal Employment Opportunity Programs: July 1, 1982 - September 30, 1983 (pp. 5-9); October 1, 1983 - September 30, 1984 (pp. 8-9).

Nineteen agencies, both Federal and private, have indicated interest in participating in the EEO Roundtable. Two Roundtable sessions are planned for FY 1986. The first meeting will address two issues: (1) the implications of the abolishment of the mandatory retirement age and (2) the use of labor force data in EEO planning.

C. Sharing of EEO Survey Data

The Commission continued to develop agreements with other Federal agencies to share statistical data gathered from its EEO Surveys and thus to eliminate duplicative reporting by employers. The five EEO Surveys, which classify employment and union membership by minority status and sex, cover larger private employers (EEO-1), state and local governments (EEO-4), educational institutions (EEO-5 and EEO-6) and local referral unions (EEO-3). Four of the surveys are jointly sponsored by other Federal agencies. The data from these surveys are shared under long-standing agreements with the Office of Federal Contract Compliance Programs of the Department of Labor, the Department of Housing and Urban Development, the Department of Transportation, the Department of Education and the Department of Justice.

Under a new agreement with the Small Business Administration (SBA), the Commission in FY 1985 for the first time provided a tape of its 1984 EEO-1 statistical file to the SBA. The Commission also negotiated a data sharing agreement with the National Center for Education Statistics (NCES) of the Department of Education, designed to avoid duplicate reporting by post-secondary educational institutions. Beginning in 1987, those institutions that file with EEOC through its EEO-6 Survey (Higher Education Staff Information Report) will not be required to report to the NCES Integrated Post-Secondary Data System. Data for that system will be supplied by EEOC.

Commission staff also held discussions with representatives of the Bureau of Apprenticeship and Training of the Department of Labor (BAT) regarding the development of an apprenticeship information report. Previously, the Commission required reports from labor-management apprenticeship programs (EEO-2) and from employer sponsored apprenticeship

programs (EEO-2E). These reports were last collected in 1979. A new draft survey and instruction booklet for such programs were developed by Commission staff and submitted for EEOC internal review and BAT review during FY 1985 to determine the usefulness of the proposed data collection to the two agencies. The proposal remained under review by the Commission at the end of the fiscal year.

In addition to these activities, the Commission's Survey Division also circulated proposals for revising some of the present EEO Surveys to other affected agencies for comment. (See Section II: Coordination and Review of Federal EEO Issuances.)

#### D. Bulletin of EEO Issuances

In 1980, the Commission established a reporting requirement under which Federal agencies submit information and projected timeframes for all equal employment issuances under development. <sup>6/</sup> Based on this information, the Commission publishes a semi-annual Bulletin of EEO Issuances Under Development, listing by agency, the title and type of each issuance, its policy objective, legal basis, current status and a contact person for further information. To ease reporting burdens, dates for submitting information for the Bulletin coincide with preparation of information for the Semiannual Regulatory Agenda. However, the Bulletin includes other EEO policy and procedural issuances which are not reported in the Regulatory Agenda.

The Bulletin has proved very helpful to the Commission and to other Federal agencies in identifying issuances at an early stage and conducting necessary coordination of their development. Agencies continue to report a substantial number of issuances under development. In the two Bulletins published in FY 1985, agencies reported 162 different

<sup>6/</sup> EEOC Revised Management Directive 1001, Bulletin of Equal Employment Issuances Under Development, July 18, 1983.

issuances currently being developed. Seventy of these issuances were proposed regulations implementing Section 504 of the Rehabilitation Act, as amended, in agencies' Federally conducted programs pursuant to 1978 amendments to the Act. In addition, 64 other regulations were reported under development by 25 agencies. Twenty-eight other issuances provided policy or procedural guidance. These include compliance manuals, EEO reporting forms and agency reports. The EEOC itself reported twenty-eight issuances under development in FY 1985. Most of these were regulations, guidance and procedures related to Federal sector equal employment, and the Age Discrimination in Employment and Equal Pay Acts.

E. Complaint Referrals to EEOC Under Joint EEOC-DOJ Regulation

There were two developments of interest during the year related to Commission initiatives to provide more effective processing of employment discrimination complaints and assure government-wide uniformity in handling such complaints. Effective March 5, 1985, as a result of a court order, previous restrictions were lifted that had limited referrals of employment complaints to EEOC by the Department of Education, 7/ under terms of a joint regulation issued by the Commission and the Department of Justice in 1983. 8/ The Commission also developed plans for training EEOC field staff and compliance staff of other Federal agencies on the procedures for implementing this regulation.

Under the joint rule, agencies that provide Federal assistance refer to EEOC individual complaints of employment discrimination filed under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the State and Local Fiscal Assistance Act of 1972 (General Revenue Sharing) and other grant statutes with similar prohibitions against discrimination, if these complaints also are covered by Title VII of the Civil Rights Act or the Equal Pay Act. Such "joint complaints" are deemed charges filed with EEOC. The Commission, acting under its own authorities and the delegated authority of the funding

7/ 50 FR 8608 (March 4, 1985).

8/ 29 C.F.R. 1691; 28 C.F.R. Part 42.

agency, investigates and seeks to resolve these complaints. The rule also requires that agencies use Title VII case law and EEOC guidelines as their standard in determining what is unlawful employment discrimination in their investigations, compliance reviews, hearings and other proceedings. The rule was designed to eliminate overlap in processing individual employment complaints and to establish uniform standards and procedures for handling such complaints.

Because the Department of Education was under a court order that required expedited complaint processing under specified time limits when the rule was issued, it was necessary to restrict its participation at that time. Modification of the court order in 1985 now enables the Department to refer individual, but not systemic, employment complaints to EEOC in compliance with the joint rule. Because of the Department's major role in providing financial assistance to educational institutions and the broad prohibition of employment discrimination in such institutions under Title IX, a considerable volume of complaint referrals is anticipated.

The added participation of the Department of Education and a review of operations under the joint rule since 1983 indicated need for more training of both EEOC and agency compliance staffs on the specific procedures established for referrals, notification and consultation on "joint complaints" under the rule.

After consultation with the Department of Justice and informal consultation with a number of other agencies, plans were developed to provide training on the joint regulation during FY'86. Two related training packages will be developed; one for EEOC field staff, the other for compliance staff of agencies that provide Federal financial assistance. Training will focus on requirements of the regulation and the implementing procedures set out in an EEOC-Department of Justice Management Directive and the EEOC's Compliance Manual. 9/

9/ EEO MD-1002, March 14, 1983; EEOC Compliance Manual, Vol. I, Section 90.

In addition, training will help staff of other agencies to identify complaints of discrimination covered by Title VII and the Equal Pay Act and provide information on Title VII standards which should be used in their compliance activities. Training for EEOC staff also will address problems reported by some agencies in relation to the processing of "joint complaints" referred by them to EEOC.

## II. Coordination and Review of Federal EEO Issuances

Coordination and review of Federal agencies' proposed regulations and other equal employment opportunity issuances continued to be a major activity during FY 1985. Reviews were conducted of 56 issuances from 40 agencies, including the EEOC. The actual number of reviews was higher, because in some cases, several drafts of a proposed issuance were reviewed. Except where other arrangements were negotiated with affected agencies, formal reviews of final issuances were completed within 15 workdays.

A list of issuances reviewed during this period is provided in the Appendix. Some examples of issuances and areas of review are summarized below.

### A. Agency Issuances

During the year, EEOC staff reviewed issuances from 39 other Federal agencies. Reviews were conducted to ensure that the issuances were derived from appropriate legal authority, consistent with Title VII of the Civil Rights Act of 1964 and with other relevant EEO laws and policy, and did not impose duplicative or excessive burdens on employers.

#### OPM Guidance on Employment of Persons with Diabetes

In June 1985, the Office of Personnel Management (OPM) published a Federal Personnel Manual Letter revising previous guidance on Federal employment of persons with diabetes. 10/ The revision was part of an

---

10/ FPM Letter 339-17 (June 21, 1985).

overall review of OPM policy on the employability of persons with a medical or physical condition to better reflect current standards of medical practice and the requirements of Section 501 of the Rehabilitation Act of 1973. The revision modified previous FPM guidance on diabetes, which had been interpreted by some agencies to bar employment of persons requiring certain amounts of insulin without considering their ability to perform a job. The revised guidance states that there is no restriction for placement of persons with diabetes when the condition does not affect performance of a job. It also provides that "the applicant's or employee's medical condition should be individually assessed with respect to the tasks, duties, working conditions and environment of the position."

The guidance as revised is consistent with EEOC regulations as well as EEOC and court decisions interpreting the Rehabilitation Act of 1973. Consultation between OPM and EEOC also resulted in the addition of a specific reference to the requirements for reasonable accommodation of diabetics in EEOC's regulations implementing the Rehabilitation Act. 11/

#### FCC Cable Regulations

In March, the Federal Communications Commission (FCC) published proposed regulations to implement the equal employment opportunity requirements of the Cable Communications Policy Act of 1984 (Cable Act). 12/ Section 634 of the Act sets forth detailed equal employment opportunity requirements that apply to all operators or managers of cable systems.

The FCC had previously issued EEO regulations on cable service. 13/ The Cable Act, while incorporating the requirements of the previous regulations, also added some new requirements. The proposed implementing

11/ 29 C.F.R. 6613.704(a).

12/ 50 F.R. 11191 (March 20, 1985).

13/ 47 C.F.R. Section 76.311.

regulations add a prohibition against age discrimination, as required by the Cable Act. They also contain reporting requirements for each cable employment unit with six or more fulltime employees.

The appendix to the proposed regulations would also modify the existing FCC Memorandum of Understanding (MOU) with EEOC. This agreement, 14/ which now covers radio and television broadcasters, provides for the exchange of information between the FCC and EEOC and provides that EEOC will process all discrimination complaints filed with FCC that are covered by Title VII. The FCC's proposed modification to the MOU would incorporate complaints against cable operators into this system. The proposed regulations were approved by the Commission and were ready for publication at the end of the fiscal year. FCC and Commission staff also were preparing final drafts of the MOU, at the end of the year.

#### Section 504 Regulations for Agencies' Federally Conducted Programs

Reviews were also conducted of 30 agencies' proposed regulations implementing Section 504 of the Rehabilitation Act in their Federally conducted programs. Under 1978 Amendments to the Rehabilitation Act, every Federal agency is required to issue Section 504 regulations prohibiting discrimination on the basis of handicap in its own programs. The reviews included 21 agencies' proposed final rules, including a proposed final joint rule to be issued by 18 agencies, and nine agencies' notices of proposed rulemaking. By the end of the fiscal year, 50 agencies had published proposed regulations in the Federal Register for comment, and three agencies had published final regulations. (See Appendix for regulations reviewed and published during the year.) In all cases, the published regulations were consistent with the Commission's recommendations.

In April 1984, the Department of Justice (DOJ) transmitted a revised "prototype" Section 504 regulation to agencies, to use as a model for their own regulations. The "prototype" included a brief section on

---

14/ 43 F.R. 38113 (September 25, 1978).

employment, in accordance with a circuit court ruling that Congress had intended to include employment in extending Section 504 to Federally conducted programs. <sup>15/</sup> Consistent with the ruling, the prototype regulation provided that the requirements for handicap nondiscrimination in EEOC's regulations implementing Section 501 of the Rehabilitation Act would be applicable to Federal employment under these Section 504 regulations.

Most of the proposed regulations reviewed during the year had adopted the recommended language on employment. However, in several cases, agencies added or substituted provisions that would have created inconsistent Federal employment requirements under these Section 504 regulations and the existing Section 501 regulations. The Commission requested and obtained appropriate amendments to eliminate these inconsistencies. A few agencies introduced definitions and concepts in parts of their regulations applicable to nonemployment programs that heretofore had been applied only to employment under Sections 501 and 504 of the Rehabilitation Act. The Commission requested these agencies to make appropriate modifications, to avoid confusion about the relevant standards applicable to Federal employment and the standards applicable to other Federal programs and services.

#### Other Agency Issuances

The Department of Education (ED) submitted for review a proposed amendment to its current Title IX regulations which prohibit sex discrimination in education programs and activities receiving or benefiting from Federal financial assistance. The purpose of ED's proposed amendment was to make its Title IX requirements consistent with the requirements of

<sup>15/</sup> Prewitt v. U.S. Postal Service, 622 F.2d 292 (5th Cir. 1981). See also Gardner v. Morris, 752 F.2d 1271, 1277 (8th Cir. 1985); Smith v. U.S. Postal Service, 742 F.2d 257, 259-260 (5th Cir. 1981).

Title VII as interpreted by the Supreme Court in Arizona Governing Committee v. Norris <sup>16/</sup> and Los Angeles Department of Water Power v. Manhart <sup>17/</sup>.

The proposed ED regulations would require that employer contributions to fringe benefit plans must be equal for both sexes.

The ED proposal was circulated for comment to the Department of Justice, which has overall coordination responsibility for Title IX, and to all other Federal agencies with Title IX enforcement responsibility. The regulation also was sent to the Department of Labor and the Internal Revenue Service to insure that it was consistent with requirements of the Employment Retirement Income Security Act and the Internal Revenue Code.

B. EEOC Issuances

Many of the issuances reviewed were being developed by the Commission itself. Early drafts of these issuances were reviewed to assure that their relation to and impact on other Federal agency programs were considered, and to promote consistency and efficiency in overall Federal equal employment efforts. Documents also were reviewed to determine whether or not they were subject to the coordination process. Where this was determined, drafts were circulated to other affected agencies for comment.

Proposed revisions to several of the Commission's EEO Surveys were coordinated during the year with affected Federal agencies. Comments on a proposal to improve the reliability and accuracy of the data collected through the Employer Information Report (EEO-1) were requested from the Department of Justice and from the Office of Federal Contract Compliance Programs of the Department of Labor, both of which use this survey. The EEO-1 requires annual filing by larger private employers. Consultation with DOJ and DOL resulted in refining the definitions to be used by

<sup>16/</sup> 103 S. Ct. 3492 (1983).

<sup>17/</sup> 435 U.S. 702 (1978).

employers in classifying employment by job category. Improving the accuracy of industry coding was also discussed with these agencies. The use of a short industry title to aid in classification is being tested for employer response in the 1985 EEO-1 Survey.

Proposed changes to the EEO-4 (State and Local Government Information Report) and the EEO-6 (Higher Education Staff Information Report) were circulated to seven agencies which utilize those reports. Following a review of their comments, it was decided to raise the salary intervals in future EEO-4 and EEO-6 Surveys to reflect inflation and current salary trends.

A draft section of EEOC's Compliance Manual affecting unions in the private sector was circulated for comment to agencies with major equal employment program responsibilities as well as to the Federal Labor Relations Authority and the National Labor Relations Board.

#### Federal Sector Employment

Following review and comment by other agencies, the Commission approved a Management Bulletin on providing reading, interpreting and personal assistance as a reasonable accommodation for qualified handicapped employees when an agency is at or above its personnel ceiling. The Bulletin states that an agency in this situation is not excused from providing reasonable accommodation through other sources, such as requesting relief from the Office of Management and Budget, contracting for the service or assigning a current employee to provide the service.

As part of the Commission's comprehensive review of Federal sector discrimination complaint procedures, several proposed management directives concerning complaint processing were circulated for agency review. A number of agencies commented on a directive regarding requests by agencies for assignment of complaint examiners. This directive contained a section proposing that EEOC might grant permission to allow another Federal agency to investigate a complaint that falls within the criteria of the directive. Agencies uniformly recommended deletion of this section

from the directive. Agencies also submitted comments on a proposed management directive concerning priority consideration of complainants and another directive explaining the time frames within which agencies must act on a final decision. These comments were being reconciled with the draft directives at the end of the fiscal year. At the end of the year the Commission also circulated certain other proposed amendments to the complaint processing regulations which are designed to streamline the process and provide greater flexibility and speed in arriving at conclusions.

APPENDIX

[3195-01]

Executive Order 12067

June 30, 1978

**Providing for Coordination of Federal Equal Employment Opportunity Programs**

By virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, including Section 9 of Reorganization Plan Number 1 of 1978 (43 FR 19807), it is ordered as follows:

**1-1. Implementation of Reorganization Plan.**

1-101. The transfer to the Equal Employment Opportunity Commission of all the functions of the Equal Employment Opportunity Coordinating Council, and the termination of that Council, as provided by Section 6 of Reorganization Plan Number 1 of 1978 (43 FR 19807), shall be effective on July 1, 1978.

**1-2. Responsibilities of Equal Employment Opportunity Commission.**

1-201. The Equal Employment Opportunity Commission shall provide leadership and coordination to the efforts of Federal departments and agencies to enforce all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity without regard to race, color, religion, sex, national origin, age or handicap. It shall strive to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the Federal departments and agencies having responsibility for enforcing such statutes, Executive orders, regulations and policies.

1-202. In carrying out its functions under this order the Equal Employment Opportunity Commission shall consult with and utilize the special expertise of Federal departments and agencies with equal employment opportunity responsibilities. The Equal Employment Opportunity Commission shall cooperate with such departments and agencies in the discharge of their equal employment responsibilities.

1-203. All Federal departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this order and shall furnish the Commission such reports and information as it may request.

**1-3. Specific Responsibilities.**

1-301. To implement its responsibilities under Section 1-2, the Equal Employment Opportunity Commission shall, where feasible:

(a) develop uniform standards, guidelines, and policies defining the nature of employment discrimination on the ground of race, color, religion, sex, national origin, age or handicap under all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity;

(b) develop uniform standards and procedures for investigations and compliance reviews to be conducted by Federal departments and agencies under any Federal statute, Executive order, regulation or policy requiring equal employment opportunity;

(c) develop procedures with the affected agencies, including the use of memoranda of understanding, to minimize duplicative investigations or compliance reviews of particular employers or classes of employers or others covered by Federal statutes, Executive orders, regulations or policies requiring equal employment opportunity;

(d) ensure that Federal departments and agencies develop their own standards and procedures for undertaking enforcement actions when compliance with equal employment opportunity requirements of any Federal statute, Executive order, regulation or policy cannot be secured by voluntary means;

(e) develop uniform record-keeping and reporting requirements concerning employment practices to be utilized by all Federal departments and agencies having equal employment enforcement responsibilities;

(f) provide for the sharing of compliance records, findings, and supporting documentation among Federal departments and agencies responsible for ensuring equal employment opportunity;

(g) develop uniform training programs for the staff of Federal departments and agencies with equal employment opportunity responsibilities;

(h) assist all Federal departments and agencies with equal employment opportunity responsibilities in developing programs to provide appropriate publications and other information for those covered and those protected by Federal equal employment opportunity statutes, Executive orders, regulations, and policies; and

(i) initiate cooperative programs, including the development of memoranda of understanding between agencies, designed to improve the coordination of equal employment opportunity compliance and enforcement.

1-302. The Equal Employment Opportunity Commission shall assist the Civil Service Commission, or its successor, in establishing uniform job-related qualifications and requirements for job classifications and descriptions for Federal employees involved in enforcing all Federal equal employment opportunity provisions.

1-303. The Equal Employment Opportunity Commission shall issue such rules, regulations, policies, procedures or orders as it deems necessary to carry out its responsibilities under this order. It shall advise and offer to consult with the affected Federal departments and agencies during the development of any proposed rules, regulations, policies, procedures or orders and shall formally submit such proposed issuances to affected departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall use its best efforts to reach agreement with the agencies on matters in dispute. Departments and agencies shall comply with all final rules, regulations, policies, procedures or orders of the Equal Employment Opportunity Commission.

1-304. All Federal departments and agencies shall advise and offer to consult with the Equal Employment Opportunity Commission during the development of any proposed rules, regulations, policies, procedures or orders concerning equal employment opportunity. Departments and agencies shall formally submit such proposed issuances to the Equal Employment Opportunity Commission and other interested Federal departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall review such proposed rules, regulations, policies, procedures or orders to ensure consistency among the operations of the various Federal departments and agencies. Issuances related to internal management and administration are exempt from this clearance process. Case handling procedures unique to a single program also are exempt, although the Equal Employment Opportunity Commission may review such procedures in order to assure maximum consistency within the Federal equal employment opportunity program.

1-305. Before promulgating significant rules, regulations, policies, procedures or orders involving equal employment opportunity, the Commission and affected departments and agencies shall afford the public an opportunity to comment.

1-306. The Equal Employment Opportunity Commission may make recommendations concerning staff size and resource needs of the Federal departments and agencies having equal employment opportunity responsibilities to the Office of Management and Budget.

1-307. (a) It is the intent of this order that disputes between or among agencies concerning matters covered by this order shall be resolved through good faith efforts of the affected agencies to reach mutual agreement. Use of the dispute resolution mechanism contained in Subsections (b) and (c) of this Section should be resorted to only in extraordinary circumstances.

(b) Whenever a dispute which cannot be resolved through good faith efforts arises between the Equal Employment Opportunity Commission and another Federal department or agency concerning the issuance of an equal employment opportunity rule, regulation, policy, procedure, order or any matter covered by this Order, the Chairman of the Equal Employment Opportunity Commission or the head of the affected department or agency may refer the matter to the Executive Office of the President. Such reference must be in writing and may not be made later than 15 working days following receipt of the initiating agency's notice of intent publicly to announce an equal employment opportunity rule, regulation, policy, procedure or order. If no reference is made within the 15 day period, the decision of the agency which initiated the proposed issuance will become effective.

(c) Following reference of a disputed matter to the Executive Office of the President, the Assistant to the President for Domestic Affairs and Policy (or such other official as the President may designate) shall designate an official within the Executive Office of the President to meet with the affected agencies to resolve the dispute within a reasonable time.

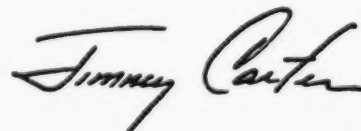
#### 1-4. Annual Report.

1-401. The Equal Employment Opportunity Commission shall include in the annual report transmitted to the President and the Congress pursuant to Section 715 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-14), a statement of the progress that has been made in achieving the purpose of this order. The Equal Employment Opportunity Commission shall provide Federal departments and agencies an opportunity to comment on the report prior to formal submission.

#### 1-5. General Provisions.

1-501. Nothing in this order shall relieve or lessen the responsibilities or obligations imposed upon any person or entity by Federal equal employment law, Executive order, regulation or policy.

1-502. Nothing in this order shall limit the Attorney General's role as legal adviser to the Executive Branch.



THE WHITE HOUSE,  
June 30, 1978.

[FR Doc. 78-18886 Filed 6-30-78; 4:23 pm]

# **federal register**

---

**Tuesday  
October 14, 1980**

---

## **Part V**

### **Equal Employment Opportunity Commission**

---

**Coordination of Federal Equal  
Employment Opportunity Programs; Final  
Regulations**

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION****29 CFR Part 1690****Coordination of Federal Equal Employment Opportunity Programs****AGENCY:** Equal Employment Opportunity Commission.**ACTION:** Final regulations.

**SUMMARY:** These regulations implement the obligations outlined in Sections 1-303 and 1-304 of Executive Order 12087 (Providing for Coordination of Federal Equal Employment Opportunity) (43 FR 28967) which require that Federal agencies consult and coordinate with EEOC in the development of rules, regulations, policies, procedures or orders dealing with equal employment opportunity. These regulations outline the means by which the consultation and coordination shall occur between the EEOC and Federal agencies.

**EFFECTIVE DATE:** October 14, 1980.

**FOR FURTHER INFORMATION CONTACT:** Francesca E. Farmer, Director, Office of Interagency Coordination, Room 4208, Equal Employment Opportunity Commission, 2401 "E" Street, NW., Washington D.C. 20506, (202) 634-6916.

**SUPPLEMENTARY INFORMATION:** On September 28, 1979, EEOC published (44 FR 55907) proposed regulations to meet the obligations outlined in Section 1-304 of the Order and invited comments from the public. The regulations were revised in light of the public comment and sent to Federal agencies on March 6, 1980 with a 15 working day notice of intent to publish in final. Three major agencies and the Equal Employment Advisory Council responded to the September publication. Twenty-six agencies responded to the March 6 fifteen day notice, the last letter arriving on June 4. Most agencies did not offer substantive comments and agreed with the proposal.

The numbering system used in these regulations was changed since the September publication to allow them to be placed in the Code of Federal Regulations and in EEOC's Management Directives System as well. For purposes of this discussion, parts of these regulations are referred to here only by the last part of the citation, e.g., Sec. 305. Here, we present the changes made since the September publication.

**Coverage**

The Office of Personnel Management (OPM) took the position that it was covered by the Executive Order but not by these regulations on the theory that the regulations only covered agencies which enforced EEO regulations. OPM

claimed to be only a policy development agency and not an enforcement agency. However, in light of several of OPM's enforcement responsibilities, including enforcement of the Federal Equal Employment Opportunity Recruitment Program, the enforcement of reporting requirements on government agencies in the management of the Civilian Personnel Data File, the program for the selective placement of the handicapped in Federal employment, and a primary role in the enforcement of the Intergovernmental Personnel Act of 1970, and the Standards for a Merit System of Personnel Administration for State and local agencies, we conclude that OPM's responsibilities are within the ambit of those contemplated to require coverage under these regulations.

**Issuance**

Three of the major agencies (DOL, HEW, and E.D.) have suggested that it would be burdensome for EEOC to obligate itself to make all determinations of whether issuances are exempt from coordination on the basis of their being internal management and administration documents. In the interest of easing the burden on the agencies and the EEOC in deciding what is covered we have modified the definition of issuance (Sec. 107(f)) by deleting the words "but is not limited to", in response to suggestions by the above agencies.

OPM and HEW suggested that "issuance" be limited such that it not cover items such as publications which reflect ideas that appear in already agreed upon rules and regulations. However, the Order (Section 1-301(h)) mandates that EEOC assist the agencies in the development of appropriate publications. The labor Department similarly requested that data collection or recordkeeping instruments be eliminated from the list of items which must be submitted as issuances. Here, too, the Order (Section 1-301(e)) requires that EEOC develop uniform recordkeeping and reporting requirements to be utilized by all Federal departments and agencies having equal employment enforcement responsibilities in that this is a major area of potential duplication, overlap, and inconsistency.

**Internal Management and Administration Exemption**

The Department of Labor also suggested that we broaden the scope of the term "Internal or Administrative Documents" (Sec. 107(e)) by deleting language referring to form letters and substitute "correspondence which does

not transmit significant new policy interpretations or program standards having an impact upon other Federal agencies." This language was adopted because it will eliminate the impression of requiring an agency to consult with EEOC before sending out any correspondence which interprets policy or enunciates established policy and standards. Finally, the regulations (Sec. 301(d)) have been changed to indicate that we expect the agencies to make the initial determination of what is a covered issuance and that they will involve EEOC only in those instances when there is doubt.

HUD indicated that EEOC should allow room in its definition of "Internal or Administrative Document" for coverage of program evaluation and program accountability in the coordination process such that when two divisions within an agency with related equal employment opportunity monitoring or enforcement responsibilities disagree on their respective roles, EEOC could (on request) mediate. EEOC's view is that while we are willing, in some circumstances, to assist agencies on intra-agency disagreements, such disagreements are not interagency and therefore not matters subject to the coordination process.

**Affected Agency**

The Federal Deposit Insurance Corporation pointed out that the definition of "affected agency" contained a reference to the definition of "agencies", thus limiting the definition of "affected agency" to those agencies having responsibility for EEO programs. The reference was not intended to create such a limitation and it has been removed from the definition of "affected agencies." The result is to clarify that agencies other than those with EEO programs will, for example, receive pre-publication notice of issuances under development and will have recourse to the dispute resolution mechanism in Section 1-307 of the Order.

**Significant Issuance**

It was requested by OPM that EEOC identify the mechanism for receiving public comment on significant issuances. Sections 304(a) (3) and (4) have been modified to indicate the opportunity provided for public comment on significant issuances.

**Agency Component**

OPM suggested that we drop the definition of "Agency Component" since it was not used in the regulations except in the definition of "Agencies" (Sec.

107(b)). We agree that the term is self-explanatory and have dropped it.

#### Publication

OPM suggested that we define the term "Public Announcement" (Sec. 107(h)) instead of "Publication" since the former appears in the Order. This suggestion has been adopted.

#### Notification to EEOC

The Department of Labor urged a return to the language of the September publication which merely *suggested* that agencies notify EEOC upon their intention to develop an issuance (Sec. 301(a)). The Order demands otherwise: Section 1-304 of the Order requires that all Federal agencies "shall advise and offer to consult with the Equal Employment Opportunity Commission during the development of any proposed rules, regulations, policies, procedures or orders concerning equal employment opportunity." (emphasis added).

DOL has also suggested a modification of Sec. 301(a) such that only significant issuances and issuances affecting another agency would trigger the requirement to notify EEOC. DOL has also suggested that agencies should only be required to supply early drafts (Sec. 301(b)) of *significant* issuances. These suggestions are inconsistent with the requirement that the agencies consult, not only on significant issuances, but also on policies and procedures including data collection and recordkeeping instruments and publications. Accordingly, EEOC has developed a system of notification of issuances under development in the form of a Management Directive. It calls for Quarterly Reports to EEOC by the agencies and a Quarterly Bulletin by EEOC to the agencies. This system is intended to assist EEOC and other Federal agencies with equal employment opportunity responsibilities to comply with the requirements in Sections 1-303 and 1-304 of Executive Order 12067. These sections require that EEOC and other Federal agencies "advise and offer to consult with affected Federal agencies during the development" of equal employment opportunity issuances.

#### Extension of Time for Consultation

When an initiating agency has denied requests by affected agencies for additional time to review a proposed issuance during the consultation period, the affected agency may appeal to the EEOC for additional time (Sec. 304(a)(2)). If the EEOC grants additional time, it will inform the initiating agency and the requesting agency of its decision. The Department of Labor has

suggested that when the EEOC grants additional time, that it give the initiating agency reasons for overturning its denial. This suggestion has been adopted because it will provide guidance to the agencies on such questions and in the long run may reduce the number of occasions when such requests will come to EEOC.

#### Coordination Among Lead Agencies

It was suggested by OPM that where lead agencies have already been designated in certain policy areas (handicapped, for example), EEOC should work directly with the lead agency to relieve the initiating agency from having to work with two coordination agencies. EEOC is always the lead agency where there are employment issues; however, it has always been EEOC's policy to work with other lead agencies on issues of mutual concern so that an initiating agency need not mediate between two lead agencies.

#### Agency Review Before Public Comment

OPM has suggested eliminating the 15 working day review period prior to publication for public comment (Sec. 304(a)(1)). The Executive Order, however, requires that  
 "... Departments and agencies shall formally submit such proposed issuances to the Equal Employment Opportunity Commission and other interested Federal department's and agencies at least 15 working days prior to public announcement ..."

#### Public Comment on Significant Issuances

We have adopted OMB's suggestion to clarify that agencies must allow at least 60 days for adequate public comment on significant issuances (Sec. 304(a)(3)). This is consistent with the requirements imposed by Executive Order 12044 (Improving Government Regulations), 43 FR 12661 (March 24, 1978).

#### Highlighting Changes Subsequent to Public Comment

We have adopted the suggestion by the Treasury Department to require that agencies highlight changes made by the initiating agency in issuances forwarded to EEOC with the 15 day notice of intent to publish in final (Sec. 304(b)). This will facilitate review by EEOC and the other affected agencies.

#### Nondisclosure of Proposed Issuances

A discussion of limitations on disclosure has been added and other language has been deleted from Sec. 305 of the regulations in response to DOL's

concern. Section 305, according to DOL and HUD, was not clear on the issue of when proposed issuances would be made public. DOL was particularly concerned that the initiating agency be assured the right to be the first to make public proposed issuances which are submitted to EEOC with a 15 day notice of intent to publish in final. DOL's comment is consistent with Section 1-304 of the Order which provides that "Departments and agencies shall formally submit such proposed issuances to the Equal Employment Opportunity Commission and other interested Federal departments and agencies at least 15 working days prior to public announcement . . ." (emphasis added). This means that the initiating agency shall be the agency to make the proposed issuance public. EEOC would not make proposed issuances public simply because the initiating agency indicated an *intent* to do so.

Compliance with this request raises several issues pertaining to disclosure requirements. The Sunshine Act, with certain exceptions, obligates the EEOC to hold open meetings in its decisionmaking process. The Freedom of Information Act requires that except for specified exemptions, documents in the possession of a government agency shall be made available to the public, on request.

However, as the Administrative Conference of the United States indicates in a 1978 Interpretative Guide to the Sunshine Act:

A question has been raised as to whether an agency would be able to assert (9)(B) in order to protect a proposed action of another agency. Although the situation may not have been in the contemplation of the drafters, the Act seems to permit it, and nothing in the policy underlying exemption (9)(B) requires a different result. The agency closing the meeting would, of course, have to make its own determination as to the likelihood of harm from opening the meeting and as to public interest in an open meeting.

Similarly, EEOC's Freedom of Information Act regulations, at 29 CFR 1610.6, provide that:

Requests for records that originated in another Agency and are in the custody of the Commission, will be coordinated in appropriate circumstances with that Agency, and the person submitting the request shall be so notified. The decision made by that Agency with respect to such records will be honored by the Commission.

Thus, Section 305 of this regulation comports with the concerns of DOL and complies with the Sunshine Act and the Commission's Freedom of Information Act regulation.

#### Temporary Waivers

DOL has suggested that the tone of Section 307 could be improved by not requiring written certification of EEOC's right to review documents which have been granted a temporary waiver. With respect to the same section, Treasury recommended the addition of language indicating that the comments of other affected agencies, in addition to those of EEOC, could result in changes to a proposed issuance. Both recommendations have been accepted.

#### Notice of Unresolved Disputes

DOL interpreted Section 306 as suggesting that agencies would have to have the concurrence of EEOC before referring a dispute to the Executive Office of the President. This was not the intention of this section. Rather it was the intention to give the initiating agency ample opportunity to resolve disputes by having them framed in writing, by the affected agency, so that the disputes may be clearly understood and discussed prior to such referral. We conclude that the prior notice requirement is a minimal requirement and consistent with EEOC's mandate to facilitate full discussion of controversial issues.

Treasury has requested that the "reasonable time" allowed agencies to resolve disputes be defined. Given that disputes may only be referred during the 15 day notice of intent to publish in final, it would not seem necessary to further define that term.

#### Recordkeeping and Reporting Requirements

OMB pointed out that the Federal Reports Act of 1942 requires that certain recordkeeping and reporting requirements cannot become effective without OMB approval. Clearance of an EEO recordkeeping and reporting requirement by EEOC under the Order does not, of course, substitute for OMB clearance.

This regulation is the first in a series of such issuances under EEOC's Executive Order 12067 authority. As experience dictates, we will issue additional written interpretations or amendments of these Executive Order regulations. Accordingly, the EEOC is adding 29 CFR Part 1690 as set forth below.

Signed at Washington, D.C., this 8th day of October, 1980.

For the Commission,  
Eleanor Holmes Norton,  
Chair.

**PART 1690—PROCEDURES ON  
INTERAGENCY COORDINATION OF  
EQUAL EMPLOYMENT OPPORTUNITY  
ISSUANCES**

**Subpart A—General**

**Sec.**

- 1690.101 Subject.
- 1690.102 Purpose.
- 1690.103 Supersession.
- 1690.104 Authority.
- 1690.105 Policy intent.
- 1690.106 Scope.
- 1690.107 Definitions.

**Subpart B—Responsibilities**

- 1690.201 Responsibilities.

**Subpart C—Policies and Procedures**

- 1690.301 Notification to EEOC during development of issuances.
- 1690.302 Issuances proposed by EEOC.
- 1690.303 Consultation with affected agencies.
- 1690.304 Coordination of proposed issuances.
- 1690.305 Nondisclosure of proposed issuances.
- 1690.306 Formal submission in absence of consultation.
- 1690.307 Temporary waivers.
- 1690.308 Notice of unresolved disputes.
- 1690.309 Interpretation of the order.

**Subpart D—Reporting Requirements**

- 1690.401 Reporting requirements.

Authority: Sec. 715 of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-14); Reorganization Plan No. 1 of 1978, 43 FR 19807; E.O. 12067, 43 FR 28967.

**Subpart A—General**

**§ 1690.101 Subject.**

Procedures on Interagency Coordination of Equal Employment Opportunity Issuances.

**§ 1690.102 Purpose.**

These regulations prescribe the means by which review and consultation shall occur between the Equal Employment Opportunity Commission and other Federal agencies having responsibility for enforcement of Federal statutes, Executive Orders, regulations and policies which require equal employment opportunity without regard to race, color, religion, sex, national origin, age or handicap. Subsequent regulations will expand on standards for the coordination of specific matters referenced or alluded to herein.

**§ 1690.103 Supersession.**

None. These regulations are the first in a series of instructions issued by EEOC pursuant to its authority under Executive Order 12067.

**§ 1690.104 Authority.**

These regulations are prepared pursuant to the Equal Employment

Opportunity Commission's obligation and authority under Section 1-303 and 1-304 of Executive Order 12067 (Providing for Coordination of Federal Equal Employment Opportunity Programs) 43 FR 28967, July 5, 1978. (These regulations will also appear as EEOC Management Directive No. 1000).

**§ 1690.105 Policy intent.**

These procedures will govern the conduct of such agencies in the development of uniform standards, guidelines and policies for defining discrimination, uniform procedures for investigations and compliance reviews and uniform recordkeeping and reporting requirements and training programs. These procedures will also facilitate information sharing and programs to develop appropriate publications and other cooperative programs. The goals of uniformity and consistency are to be achieved with the maximum participation and review on both an informal and formal basis by the relevant Federal agencies and, finally, by the public.

**§ 1690.106 Scope.**

These regulations apply to Federal agencies having equal employment opportunity program responsibilities or authority other than equal employment responsibilities for their own Federal employees or applicants for employment. Its provisions do not apply to issuances related to internal management or administration of the agency.

**§ 1690.107 Definitions.**

(a) "Affected Agency" means any agency whose programs, policies, procedures, authority or other statutory mandates (including coverage of groups of employers, unions, State and local governments or other organizations mandated by statute or Executive Order) indicate that the agency may have an interest in the proposed issuance.

(b) "Agencies" means those Executive and independent agencies, agency components, regulatory commissions, and advisory bodies having equal employment opportunity program responsibilities or authority other than equal employment opportunity responsibilities for their own Federal employees.

(c) "Consultation" means the exchange of advice and opinions on a subject occurring among the EEOC and affected agencies before formal submission of the issuance.

(d) "Formal Submission" means the transmittal of a written, publication-ready document by the issuing agency to the EEOC and other affected agencies for at least 15 working days from date of receipt. The formal submission shall take place before the publication of any issuance as a final document.

(e) "Internal or Administrative Documents", pursuant to 1-304 of the Order, may include, but are not limited to forms for internal audit and recordkeeping; forms for performance and program evaluation; internal directives dealing with program accountability; routine intra-agency budget forms; intra-agency agreements; correspondence which does not transmit significant new policy interpretations or program standards having an impact upon other Federal agencies; tables of organization; and other documents setting forth administrative procedures for the conduct of programs. Internal or administrative documents do not include compliance manuals, training materials, publications or any other internal documents setting forth procedures for the resolution of complaints, standards of review or proof, or any other policies, standards or directives having implications for non-Federal employees.

(f) "Issuance" refers to any rule, regulation, guideline, order, policy directive, procedural directive, legislative proposal, publication, or data collection or recordkeeping instrument. It also includes agency documents as described above, or revisions of such documents, developed pursuant to court order. "Issuance" does not include orders issued to specific parties as a result of adjudicatory-type processes.

(g) "Order" means Executive Order 12067 (Providing for Coordination of Federal Equal Employment Opportunity Programs).

(h) "Public Announcement" means the publication of a document in final form in the Federal Register or to any other promulgation for general agency or public reference.

(i) "Significant Issuance" means any issuance which the public must be afforded an opportunity to comment upon. In determining whether an issuance is significant, the EEOC shall apply the following criteria:

(1) The type and number of individuals, businesses, organizations, employers, labor unions, or State and local governments affected;

(2) The compliance and reporting requirements likely to be involved;

(3) The impact on the identification and elimination of discrimination in employment;

(4) The relationship of the proposed issuance to those of other programs and agencies.

#### Subpart B—Responsibilities

##### § 1690.201 Responsibilities.

(a) The Director of the Office of Interagency Coordination (OIC) is responsible for coordinating the consultation and review process with other agencies on any issuances covered by the Order.

(b) All Federal agencies shall advise and offer to consult with the EEOC during the development of any proposed issuances, concerning equal employment opportunity which affect the obligations of employers, labor organizations, employment agencies or other Federal agencies.

(c) The Equal Employment Opportunity Commission shall advise and offer to consult with the affected Federal agencies during the development of any proposed issuances concerning equal employment opportunity which affect the obligations of employers, labor organizations, employment agencies or other Federal agencies.

#### Subpart C—Policies and Procedures

##### § 1690.301 Notification to EEOC during development of issuances.

(a) Agencies shall notify the Commission whenever they intend to develop a significant issuance or an issuance affecting other agencies so that potential duplication, overlap, or inconsistency with the proposed issuances of other agencies can be identified before substantial agency time and resources have been expended. The requirement for consultation applies whether or not the agency plans to publish the issuance in the Federal Register for public comment.

(b) Whenever an agency of the Federal government (initiating agency) develops a proposed issuance which will require consultation among the affected agencies, a responsible official of that agency or agency component shall initiate consultation by submitting an early draft of the appropriate documents, preferably after review at the first or second supervisory level, to the chair of the EEOC (ATTN: Director, OIC). The submission shall be made prior to the point that the issuance is deemed final and ready for publication and shall indicate the appropriate office or person responsible for development of the issuance.

(c) EEOC recognizes that subsequent intra-agency clearance activities may change the policies outlined in the

issuance and may add or delete items included in prior drafts. Therefore, during this period of policy development, an initiating agency shall not be bound by the contents of drafts which precede the final draft.

(d) Except as provided in Section 1690.307, in no instance shall there be formal submission to the EEOC or the affected agencies without prior consultation pursuant to Section 1-304 of the Order.

(e) Where an agency issuance is related to the internal management or administration of the agency, the issuance is exempt from the consultation process under the Order. The initiating agencies will make the determination of what must be submitted. When the agencies are in doubt, EEOC will determine the extent to which a particular issuance is covered by this exemption.

#### **§ 1690.302 Issuances Proposed by EEOC.**

Whenever the EEOC proposes to develop a significant issuance or any issuance requiring consultation, the procedure outlined in these regulations, shall also apply, as set forth in Section 1-303 of the Order. The EEOC shall advise and consult with other affected agencies whenever it develops an issuance, in the same manner and to the same extent as other agencies are required to do in § 1690.301 above and in other sections below.

#### **§ 1690.303 Consultation with affected agencies.**

At the start of consultation, the EEOC shall determine which other agencies would be affected by the proposed issuance, and the initiating agency shall consult with such agencies. Initiating agencies shall also consult with other agencies which claim that their internal equal employment opportunity or personnel programs are affected by proposed issuances otherwise directed at external equal employment opportunity efforts. Agencies may consult with any other agencies that they believe would be affected by the issuance. The consultation period shall be determined by the parties. During the consultation period, the EEOC shall seek to resolve any disputes with the initiating agency before publication.

#### **§ 1690.304 Coordination of proposed issuance.**

(a) *Procedure for publication of proposed issuance.* (1) If the initiating agency, after consultation with EEOC, proposes to publish the issuance for purposes of receiving comments from the public, it shall confer with EEOC and agree on a mutually agreeable

length of time, no less than 15 working days, during which the proposal shall be submitted to all affected Federal agencies pursuant to Section 1-304 of the Order. The period of review shall be sufficient to allow all affected agencies reasonable time in which to properly review the proposal.

(2) When an affected agency wishes an extension of the review period, it shall make such request of the initiating agency. If the initiating agency does not grant the request, the affected agency may then make that request of EEOC. EEOC may, at its discretion, grant the additional time requested, whereupon EEOC will inform the initiating agency which shall extend the review period. EEOC shall also inform the initiating agency of the reasons for the extension.

(3) After 15 working days, if the EEOC has not requested an extension of time or otherwise communicated the need for more time to review the proposal, the initiating agency may proceed to publication of the proposed significant issuance for public comment for at least 60 days.

(4) During this public comment period, certain issues may be submitted to employer and employee representatives for comment pursuant to Section 2(c) of Executive Order 12044 (Improving Government Regulations) which requires that agencies give the public an early and meaningful opportunity to participate in the development of significant regulations.

(b) *Procedure for publication of final issuance.* After the period for public comment has closed, the initiating agency shall then incorporate the changes it deems appropriate and forward to EEOC for review, a copy of the document as published, a copy of the document as amended, with changes highlighted, any staff analysis, and a list of commentors. EEOC or affected agencies may review and copy the comments received. The time needed to review these materials shall be agreed on by the EEOC and the initiating agency. After completion of this review, the initiating agency shall formally submit the proposed final issuance to all affected agencies for at least 15 working days prior to publication.

#### **§ 1690.305 Nondisclosure or proposed issuances.**

(a) In the interest of encouraging full interagency discussion of these matters and expediting the coordination process, the EEOC will not discuss the proposed issuances of other agencies at an open Commission meeting where disclosure of information would be likely to significantly frustrate implementation of a proposed agency action. The

Commission will make this determination on a case by case basis.

(b) Requests by the public for drafts of proposed issuances of another agency will be coordinated, in appropriate circumstances, with that agency and the person submitting the request shall be so notified. The decision made by that agency with respect to such proposed issuances will be honored by the Commission.

**§ 1690.306 Formal submission in absence of consultation.**

If an initiating agency has an issuance which was already under development on or before July 1, 1978, when Executive Order 12067 became effective, and on which there has been no consultation, the agency shall immediately notify the EEOC of the existence of such proposals and the following procedure shall apply:

(a) EEOC shall confer with the initiating agency and shall determine whether the proposal should be the subject of informal consultation and/or formal submission to other affected Federal agencies pursuant to Section 1-304 of the Order. This does not preclude the right of the agency to consult with any other agency it wishes.

(b) If the EEOC decides that informal consultation and/or formal submission is necessary, it shall confer with the proposing agency and agree on a mutually acceptable length of time for one or both (the informal consultation and/or formal submission).

(c) The period of formal submission shall be sufficient to allow all affected agencies time in which to properly review the proposal. While such period may be longer, in no instance may it be shorter than 15 working days.

**§ 1690.307 Temporary waivers.**

(a) In the event that the proposed issuance is of great length or complexity, the EEOC may, at its discretion, grant a temporary waiver of the requirements contained in § 1690.303 or § 1690.304. Such waivers may be granted if: (1) The period of consultation and thorough review required for these documents would be so long as to disrupt normal agency operations; or (2) the initiating agency is issuing a document to meet an immediate statutory deadline; or (3) the initiating agency presents other compelling reasons why interim issuance is essential.

(b) In the event of a waiver, the initiating agency shall clearly indicate that the issuance is interim, has been published pursuant to a waiver, and is subject to review. EEOC reserves the right, after publication, to review the document in light of the objectives of the

Order. The initiating agency may make substantive conforming changes in light of comments by EEOC and other affected agencies.

**§ 1690.308 Notice of unresolved disputes.**

(a) The disputes resolution mechanism in Section 1-307 of the Executive Order should be used only in extraordinary circumstances, and only when further good faith efforts on the part of the EEOC and the agency involved would be ineffective in achieving a resolution of the dispute. Before using the disputes resolution mechanism, the EEOC or the initiating agency must have fully participated in the coordination process, including giving notification to the EEOC and the affected agencies of its intention to publish in final within 15 working days.

(b) EEOC or the affected agency shall then send written notification of the dispute and the reasons for it to the EEOC and to the other affected agencies. Thereafter, but within the 15 day notice period, the EEOC or the affected agency may refer the dispute to the Executive Office of the President. Such reference may be made by the Chair of the EEOC or the head of the Federal agency. If no reference is made within 15 working days, the decision of the agency which initiated the proposed issuance will become effective.

**§ 1690.309 Interpretation of the Order.**

Subject to the dispute resolution procedures set forth above and in accordance with the objectives set forth in 1-201 and the procedures in 1-303 of the Order, the EEOC shall interpret the meaning and intent of the Order. EEOC also will issue procedural changes under the Order, as appropriate, after advice and consultation with affected agencies as provided for in these procedures.

**Subpart D—Reporting Requirements**

**§ 1690.401 Reporting requirements.**

The regulations do not establish reporting requirements other than the required notices of proposed rulemaking and formal and informal review.

[FR Doc. 80-27930 Filed 10-10-80; 8:45 am]

BILLING CODE 6570-06-M



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

AUG 12 1981

Honorable J. Clay Smith  
Acting Chairman  
Equal Employment Opportunity Commission  
Washington, D.C. 20506

Dear Mr. Chairman:

I am writing to confirm the agreement that our staffs have reached regarding coordination of Executive Orders 12291, 12250, 12067 and the Paperwork Reduction Act of 1980 (P.L. 96-511). The development of complementary procedures for the execution of these Orders and this Act will help ensure that the goals of the Administration are met in a timely manner.

The principal feature of these procedures is that agencies will be required to submit any draft NPRM, final rule, or information collection that is subject to review under Executive Orders 12250, 12067, or the Paperwork Reduction Act to the Department of Justice or EEOC, as appropriate, before the NPRM, rule, or information collection is submitted to OMB under Executive Order 12291 or the Paperwork Reduction Act. After Justice or EEOC has cleared the NPRM, final rule, or information collection, DOJ or EEOC as appropriate, will submit the NPRM, final rule, or information collection to OMB for review under Executive Order 12291 or the Paperwork Reduction Act.

We expect the procedure to work as follows:

1. An agency proposing a draft NPRM, final rule, or information collection subject to Executive Order 12250 or 12067 will submit the proposed issuance to DOJ or EEOC, as appropriate.
2. DOJ and EEOC will perform their respective Executive Order functions, including the resolution of differences between the proposed rule and underlying statutes, case law, related regulations, guidelines and policies, prior to submitting the rule to OMB for review under E.O. 12291 or the Paperwork Reduction Act. Where both DOJ and EEOC have jurisdiction over a draft NPRM, disagreement will be resolved prior to the draft being submitted to OMB or the unresolved issues clearly articulated.

3. DOJ and EEOC shall, as part of their reviews, study and attempt to minimize costs and paperwork requirements. DOJ and EEOC shall ensure that any benefit-cost analysis required by Executive Order 12291 is included in the NPRM or final rule. However, DOJ and EEOC are not required to perform a substantive review of the analysis.
4. DOJ and EEOC, as appropriate, will forward the draft NPRM, final rule, or information collection to OMB. To the extent that both DOJ and EEOC have jurisdiction over a draft NPRM, final rule, or information collection, the entity with primary jurisdiction shall forward it. The sponsoring agency will be required to provide EEOC or Justice supporting documents required by OMB under E.O. 12291 or the Paperwork Reduction Act.

DOJ and EEOC should notify agencies subject to their jurisdiction under Executive Orders 12250 and 12067 of these procedures. The OMB desk officers within the Office of Information and Regulatory Affairs will not accept for review any draft NPRM's, final rules, or information collections that have not been coordinated with DOJ or EEOC under Executive Order 12250 or 12067.

Should you or your staff have any questions, please feel free to call Mr. Nathaniel Scurry, OMB's Assistant Director for Civil Rights on 395-3556.

Sincerely yours,

/s/ James C. Miller III

James C. Miller III  
Administrator for Information  
and Regulatory Affairs

FEDERAL AGENCY EEO ISSUANCES REVIEWED AND COORDINATED  
October 1, 1984 - September 30, 1985

(Issuances are regulations, unless otherwise noted.)

DEPARTMENT OF EDUCATION

- o Amendment of Fringe Benefit Provisions in Title IX Programs

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

- o Interpretation of Post-Normal Pension Accrual Under the Age Discrimination in Employment Act
- o EEO-1 Report (Employer Information Report)
- o EEO-4 Report (State and Local Government Information Report)
- o EEO-6 Report (Higher Education Staff Information Report)
- o Compliance Manual, Vol. II, Section 630: Unions

Federal Sector

- o Agency Requests for Assignment of Complaints Examiners (Revised Management Directive 501)
- o Avoidance of Delay in Final Agency Decisions (Management Directive)
- o Docketing of Complaints (Management Directive)
- o Priority Consideration in the Federal Sector Complaints Process (Management Directive)
- o Request to EEOC for EEO Investigations (Revised Management Directive 401)
- o Providing Reading, Interpreting and Personal Assistance as a Reasonable Accommodation for Qualified Handicapped Employees When an Agency is At or Above the Personnel Ceiling (Management Bulletin)
- o Employment of Minorities, Women, Handicapped Individuals and Disabled Veterans in the Federal Government - FY 1983 (Report)
- o Amendments to Federal Sector Complaint Processing Procedures

FEDERAL COMMUNICATIONS COMMISSION

- o Implementation of the Cable Communications Policy Act of 1984

DEPARTMENT OF HEALTH AND HUMAN SERVICES

- o Recruitment and Selection Procedures of Head Start Staff

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

- o Complaint Investigation Training Guide

DEPARTMENT OF THE INTERIOR

- o Nondiscrimination in Outer Continental Shelf Contracting and Subcontracting

DEPARTMENT OF LABOR

- o Nondiscrimination in Federally Assisted Programs
- o Implementation of the Senior Community Service Employment Program

DEPARTMENT OF LABOR (WOMEN'S BUREAU)

- o United Decade for Women, 1976-1985: Employment in the United States (Report)

OFFICE OF PERSONNEL MANAGEMENT

- o Federal Personnel Manual Letter 339-17: Employment of Persons With Diabetes Mellitus
- o Employment Practices (Recruitment, Measurement, Ranking and Selection)

Reviews of Proposed Agency Regulations Implementing Section 504  
in Federally Conducted Programs

Administrative Conference of the United States\*  
Advisory Commission on Intergovernmental Relations\*  
Advisory Committee on Federal Pay\*  
Alaska Natural Gas Transportation System\*  
American Battle Monuments Commission\*  
Commission on Civil Rights  
Board for International Broadcasting\*  
Consumer Product Safety Commission\*  
Department of Energy\*  
Executive Office of the President  
Export - Import Bank of the United States\*  
Federal Deposit Insurance Corporation  
Federal Emergency Management Agency  
Federal Trade Commission  
Federal Reserve Board  
Institute of Museum Services\*  
International Boundary and Water Commission - U.S and Mexico\*  
International Development Cooperation Agency\*  
International Trade Commission\*  
Marine Mammal Commission\*  
National Commission on Libraries and Information Science\*

\*Proposed final rule is part of joint publication by 18 agencies coordinated by the Department of Justice

National Endowment for the Humanities\*  
National Transportation Safety Board\*  
Panama Canal Commission  
Railroad Retirement Board  
Small Business Administration  
Selective Service System  
Department of the Treasury  
U.S. Arms Control and Disarmament Agency\*  
U.S. Information Agency

---

\* Proposed final rule is part of joint publication by 18 agencies coordinated by the Department of Justice.